

HOUSE BILL No. 1319

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

Synopsis: Annexation local public question. Provides that if 10% or 500 voters in an area proposed to be annexed sign a petition that a local public question be placed on the ballot of a primary or general election, the county election board must place the local public question concerning the annexation on the ballot. Provides that an election must be held in the municipality and the territory proposed to be annexed. Provides that if a majority of votes cast at each of the elections are in favor of the proposed annexation, the annexation shall take place unless a remonstrance petition has been filed. Provides that if a majority of votes cast at one of the elections are not in favor of the proposed annexation, the annexation may not take place and a court
(Continued next page)

Effective: January 1, 1999 (retroactive).

Cheney

January 12, 1999, read first time and referred to Committee on Local Government.



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must dismiss a pending remonstrance petition and order the annexation not to take place. Requires a municipality to provide written notice of a hearing concerning a proposed annexation to each owner of real property located within the territory proposed to be annexed. Requires the clerk of the municipality to submit a description and map of the territory proposed to be annexed to the circuit court clerk in the county in which the annexed territory is located. Requires the circuit court clerk to determine the registered voters within: (1) the territory proposed to be annexed; and (2) each precinct within the territory proposed to be annexed. Requires the circuit court clerk to submit the voter information to the county election board. Provides that these provisions apply to a municipality that adopts an annexation ordinance after January 1, 1999.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1319

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-4-3-2.1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:
3 Sec. 2.1. A municipality may adopt an ordinance under this chapter
4 only after the legislative body has held a public hearing concerning the
5 proposed annexation. All interested parties must have the opportunity
6 to testify as to the proposed annexation. Notice of the hearing shall be:
7 (1) published in accordance with IC 5-3-1; and
8 (2) mailed as set forth in section 2.2 of this chapter.
9 SECTION 2. IC 36-4-3-2.2 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
11 JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 2.2. (a) Before a**
12 **municipality may annex territory, the municipality shall provide**
13 **written notice of the hearing as required under section 2.1 of this**
14 **chapter. The notice shall be sent by certified mail at least sixty (60)**
15 **days before the date of the hearing to each owner of real property,**

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IN 1319—LS 7593/DI 87+



as shown on the county auditor's current tax list, whose real property is located within the territory proposed to be annexed.

(b) The notice required by this section must include the following:

(1) The date, time, location, and subject of the hearing.

(2) A statement of the municipality's intent to annex the territory.

(3) A description of the real property proposed to be annexed sufficient to identify the proposed territory.

(4) A statement that the owner's property is located within the territory proposed to be annexed.

(c) If the notice is returned unclaimed or refused, the municipality shall mail the notice by regular mail not later than one (1) business day after receiving the returned notice. A notice sent by regular mail under this subsection is not required to be sent at least sixty (60) days before the date of the hearing.

(d) If the municipality complies with this section, the notice is not invalidated if the owner does not receive the notice.

SECTION 3. IC 36-4-3-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 4.6. (a) Not later than sixty (60) days after the publication of the annexation ordinance under section 6 of this chapter, if:**

(1) ten percent (10%); or

(2) five hundred (500);

of the voters from the area proposed to be annexed sign a petition submitted to the circuit court clerk requesting that a local public question concerning the annexation be placed on the ballot, the county election board shall place the following question on the ballot in accordance with IC 3-10-9 and subsection (c) during the next general or primary election for which the question may be certified under IC 3-10-9-3:

"Shall (insert the name of the municipality) annex the following territory?:

(insert a description of the territory proposed to be annexed as prescribed in subsection (b))".

(b) The local public question must generally describe the boundaries of the territory proposed to be annexed by the municipality. The description must set out the boundaries of the territory as near as reasonably possible by streets, rivers, and other similar boundaries that are known by common names and, where this is not possible, by section lines or other legal



descriptions.

(c) The county election board shall place the local public question on the ballot during the next primary or general election in the following locations:

(1) The municipality proposing the annexation.

(2) The territory that is the subject of the annexation.

(d) All registered voters of:

(1) the municipality; and

(2) the territory proposed to be annexed;

may vote on the local public question.

SECTION 4. IC 36-4-3-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 4.7. (a) The clerk of the municipality shall submit a description and map of the territory proposed to be annexed to the circuit court clerk in the county in which the annexed territory is located.**

(b) The circuit court clerk shall determine the registered voters residing within:

(1) the territory proposed to be annexed; and

(2) each precinct within the territory proposed to be annexed.

(c) The circuit court clerk shall submit the information under subsection (b) to the county election board.

SECTION 5. IC 36-4-3-4.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 4.8. (a) If a majority of the votes cast on the local public question in at least one (1) of the elections described in section 4.6(c) of this chapter is not in favor of the proposed annexation, the annexation may not take place.**

(b) If a majority of the votes cast on the local public question in each of the elections described in section 4.6(c) of this chapter are in favor of the proposed annexation, the annexation shall take place. The court shall schedule a hearing on the remonstrance as set forth in section 12 of this chapter.

(c) If a sufficient remonstrance petition has been filed under section 11 of this chapter, the circuit court clerk shall certify the results of the local public question in each of the elections to the court where the remonstrance has been filed.

(d) If a remonstrance has not been filed under section 11 of this chapter, the circuit court clerk shall certify the results to the clerk of the municipality as set forth in section 15 of this chapter.

SECTION 6. IC 36-4-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:



Sec. 11. (a) Whenever territory is annexed by a municipality under this chapter, the annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by:

- (1) a majority of the owners of land in the annexed territory; or
- (2) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory.

The remonstrance must be filed within sixty (60) days after the publication of the annexation ordinance under section 7 of this chapter, must be accompanied by a copy of that ordinance, and must state the reason why the annexation should not take place.

(b) On receipt of the remonstrance, the court shall determine whether the remonstrance has the necessary signatures. In determining the total number of landowners of the annexed territory and whether signers of the remonstrance are landowners, the names appearing on the tax duplicate for that territory constitute prima facie evidence of ownership. Only one (1) person having an interest in each single property, as evidenced by the tax duplicate, is considered a landowner for purposes of this section.

(c) **Except as provided in subsection (d),** if the court determines that the remonstrance is sufficient, it shall fix a time, within sixty (60) days of its determination, for a hearing on the remonstrance. Notice of the proceedings, in the form of a summons, shall be served on the annexing municipality. The municipality is the defendant in the cause and shall appear and answer.

(d) If the court determines that the remonstrance is sufficient and a petition for a local public question with the necessary number of signatures is filed under section 4.6 of this chapter, the court shall stay the remonstrance proceedings. If a majority of the votes cast at each of the elections on the local public question are in favor of the annexation, the court shall schedule a hearing on the remonstrance petition not later than sixty (60) days after the court receives the certified results of the local public question from the circuit court clerk under section 4.8 of this chapter.

(e) If a majority of the votes cast in at least one (1) of the elections on the local public question are not in favor of the annexation, the court shall order the annexation not to take place. The court's order shall be forwarded to the clerk of the municipality under section 15 of this chapter.

SECTION 7. IC 36-4-3-15.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 15.1. (a) If a**



1 remonstrance has not been filed under section 11 of this chapter,
 2 the circuit court clerk shall certify the results of the local public
 3 question in each of the elections to the clerk of the municipality.
 4 The clerk of the municipality shall record the election results in the
 5 clerk's ordinance record.

6 (b) If a majority of the votes cast in at least one (1) of the
 7 elections on the local public question are adverse to annexation, the
 8 municipality may not make further attempts to annex the territory
 9 during the two (2) years after the later of:

10 (1) the date of the elections on the local public question; or

11 (2) the disposition of any appeal of the election results;

12 unless a petition for the annexation is filed under section 5 of this
 13 chapter.

14 (c) If a majority of the votes cast at each of the elections on the
 15 local public question are in favor of annexation and a
 16 remonstrance has not been filed under section 11 of this chapter,
 17 the annexation is effective when the clerk of the municipality
 18 complies with the filing requirement of section 22(a) of this
 19 chapter.

20 SECTION 8. IC 36-4-3-19 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:
 22 Sec. 19. (a) If disannexation is ordered under this chapter by the works
 23 board of a municipality and no appeal is taken, the clerk of the
 24 municipality shall, without compensation and not later than ten (10)
 25 days after the order is made, make and certify a complete transcript of
 26 the disannexation proceedings to the auditor of each county in which
 27 the disannexed lots or lands lie and to the ~~state certifying official~~
 28 ~~designated under IC 3-6-4.2-11~~ **office of the secretary of state**. The
 29 county auditor shall list those lots or lands appropriately for taxation.
 30 The proceedings of the works board shall not be certified to the county
 31 auditor if an appeal to the circuit court has been taken.

32 (b) In all proceedings begun in or appealed to the circuit court, if
 33 vacation or disannexation is ordered, the clerk of the court shall
 34 immediately after the judgment of the court, or after a decision on
 35 appeal to the supreme court or court of appeals if the judgment on
 36 appeal is not reversed, certify the judgment of the circuit court, as
 37 affirmed or modified, to:

38 (1) the ~~county~~ auditor of ~~each county~~ in which the lands or lots
 39 affected lie, on receipt of one dollar (\$1) for the making and
 40 certifying of the transcript from the petitioners for the
 41 disannexation;

42 (2) the ~~state certifying official designated under IC 3-6-4.2-11;~~



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1 **office of the secretary of state; and**

2 (3) the circuit court clerk, and if a board of registration exists, the
3 board of each county in which the lands or lots affected are
4 located.

5 (c) The county auditor shall forward a list of lots or lands
6 disannexed under this section to the following:

7 (1) The county highway department.

8 (2) The county surveyor.

9 (3) Each plan commission, if any, that lost or gained jurisdiction
10 over the disannexed territory.

11 (4) Any state agency that has requested copies of disannexations
12 filed with the county auditor under this section.

13 The county auditor may require the clerk of the municipality to furnish
14 an adequate number of copies of the list of disannexed lots or lands or
15 may charge the clerk a fee for photoreproduction of the list.

16 (d) A disannexation described by this section takes effect upon the
17 filing of the order with the circuit court clerk and the state certifying
18 official.

19 (e) A disannexation order under this chapter may not take effect
20 during the year preceding a year in which a federal decennial census is
21 conducted. A disannexation order that would otherwise take effect
22 during the year preceding a year in which a federal decennial census is
23 conducted takes effect January 2 of the year in which a federal
24 decennial census is conducted.

25 **SECTION 9. IC 36-4-3-22 IS AMENDED TO READ AS**
26 **FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:**
27 **Sec. 22. (a) The clerk of the municipality shall:**

28 (1) file each annexation ordinance against which a remonstrance,
29 **or an appeal, or a petition for a local public question** has not
30 been filed during the period permitted under this chapter or the
31 certified copy of a judgment ordering an annexation to take place
32 with:

33 (A) the county auditor of each county in which the annexed
34 territory is located;

35 (B) the circuit court clerk, and if a board of registration exists,
36 the board of each county in which the annexed territory is
37 located; and

38 ~~(C) the state certifying official designated under IC 3-6-4.2-11;~~
39 **the office of the secretary of state; and**

40 **(2) if a majority of the votes cast at each of the elections are in**
41 **favor of annexation, and no remonstrance has been filed**
42 **under section 11 of this chapter, file the certified results with:**

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(A) the county auditor of each county in which the annexed territory is located; and

(B) the office of the secretary of state.

~~(2)~~ (3) record each annexation ordinance adopted under this chapter in the office of the county recorder of each county in which the annexed territory is located.

(b) The copy must be filed and recorded ~~no~~ not later than ninety (90) days after:

(1) the expiration of the period permitted for a remonstrance or appeal; ~~or~~

(2) the delivery of a certified order under section 15 of this chapter; **or**

(3) the delivery of the certified results of the elections on a local public question under section 15 of this chapter.

(c) Failure to record the annexation ordinance as provided in subsection (a)(2) does not invalidate the ordinance.

(d) The county auditor shall forward a copy of any annexation ordinance filed under this section to the following:

(1) The county highway department.

(2) The county surveyor.

(3) Each plan commission, if any, that lost or gained jurisdiction over the annexed territory.

(4) Any state agency that has requested copies of annexations filed with the county auditor under this section.

(e) The county auditor may require the clerk of the municipality to furnish an adequate number of copies of the annexation ordinance or may charge the clerk a fee for photoreproduction of the ordinance.

(f) The county auditor shall, upon determining that an annexation ordinance has become effective under this chapter, indicate the annexation upon the property taxation records maintained in the office of the auditor.

SECTION 10. [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)] **This act applies to a municipality that adopts an annexation ordinance after January 1, 1999.**

SECTION 11. **An emergency is declared for this act.**

